Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Rules and Policies Concerning	)	MB Docket No. 04-256
Attribution of Joint Sales Agreements	)	
In Local Television Markets	)	

To: The Secretary
Federal Communications Commission

COMMENTS ON NOTICE OF PROPOSED RULEMAKING

Holston Valley Broadcasting Corporation ("Holston") submits the following Comments in response to the Commission's *Notice of Proposed Rule Making* in MB Docket No. 04-256. The issue under consideration is whether television Joint Sales Agreements ("JSAs") should be attributable to the brokering station. As detailed below, Holston has been the licensee of a UHF station in the Tri-Cities (Bristol, VA - Kingsport, TN - Johnson City, TN) Market (DMA No. 90) for over 30 years, and has operated pursuant to JSAs with the two dominant VHF affiliates in the market since January 1, 2000. Based on its experience, Holston submits that the Commission's analysis of television JSAs is too limited, and its tentative conclusion that television JSAs should be attributable is seriously flawed and unwarranted. The Commission bases its tentative conclusion on its experience with radio JSAs and its detailed examination of one JSA arrangement; Holston's experience and two JSA agreements offer a far different set of facts and support the conclusion that the type of JSAs under which it has operated for almost four years should not be attributable.

Background

1. Holston Valley Broadcasting Corporation entered the television broadcasting business in 1969 with the construction of the Tri-City, TN/VA, market's first UHF television station, WKPT-TV. Located in a market containing some of the nation's most mountainous topography east of the Rockies and long dominated by two long entrenched VHF affiliates of the CBS and NBC networks, Holston's WKPT-TV, which immediately became the local ABC affiliate, struggled for audience and advertising revenues from the beginning, but finally turned the corner financially in 1973. It was joined in the market in 1985 by a second UHF station (originally WETO, now WEMT), which later became the market's Fox affiliate. WETO's financial difficulties led to its later being auctioned to the highest bidder. In 1991 Holston added its first LPTV station, which later became Class A TV station, WAPK-CA, a charter affiliate of the UPN television network. Both Holston-owned stations have struggled for audience and revenue as cable and satellite have ever more fractionalized overall television viewership. The A.C. Nielsen Company reports current cable penetration in the Tri-Cities, TN/VA DMA to be 73% and that 19% of the households in the market are served by other multi-channel alternate delivery services (ADS), basically direct broadcast satellite (DBS).

2. In mid-1999 facing the expense of building a new digital television station, poor ratings for the programming supplied by its principal network, ABC, the impending diminution and ultimate anticipated complete loss of compensation from ABC, and having experienced a net loss of over $100,000 in 1998 from its television operation with even greater losses anticipated for 1999, Holston's owner concluded that it must seek some sort of alliance for its television operation - logically with another television station operator in the market - in order to ensure

the continued viability of its television operation; however, at this time the Commission was considering whether television LMAs and JSAs should be attributable, which created uncertainty in how to proceed.

3. In August, 1999, the Commission's decision was announced declaring that television LMAs were indeed to be attributable, but that television JSAs were not. At this point negotiations with the local NBC affiliate, WCYB, were undertaken resulting in the creation of a JSA, which became effective January 1, 2000. Under the arrangement WCYB handled sales, traffic, and promotion, for Holston's TV stations. WCYB covered its own JSA-related expenses and paid Holston a minimum monthly fee with an override amount due if sales exceeded a pre-set figure. All other aspects of Holston's TV operation remained unchanged including the programming and news departments, control room operations, engineering, and the general and administrative department. Importantly, WCYB was not involved in the programming of Holston's TV stations in any way. Obviously Holston had every incentive to program its stations so as to provide maximum ratings in order to make the sales effort successful, because the more successful the sales effort was, the more income would accrue to Holston. Indeed Holston competed vigorously with its JSA "partner," WCYB, for syndicated programming product.

4. Unfortunately, less than two years into the JSA, WCYB elected to terminate the JSA effective in mid-February of 2002, since WCYB had sustained substantial losses under the JSA and saw little chance for improvement. Having no sales or traffic staff or sales management in place and with the WCYB employees, who had performed these services for Holston's TV stations, bound by WCYB under the terms of "non-compete" agreements, Holston turned to

Media General Broadcast Group, the operator of the other dominant VHF station in the market, CBS affiliate, WJHL for a new JSA relationship, which commenced on February 18, 2002. As with the previous JSA the sales, traffic, and promotion functions were outsourced to the JSA "partner." Unlike the previous JSA, the new one was essentially a "pay as you go" relationship for Holston from the start and evolved in 2004 into precisely that. Holston covers all of WJHL's expenses associated with the JSA and in addition pays WJHL a commission on the net advertising sales of the JSA. With one exception (detailed below) WJHL is not involved with the programming of Holston's stations. As was the case under the first JSA, Holston retains a complete programming department and is more than ever incentivized to buy the best syndicated programming product in order to produce the best ratings, which in turn maximize sales and thus revenues to Holston.

5. Unfortunately, a casualty of the deteriorating financial situation was Holston's in house local TV news department. Holston's own TV news effort began with the sign-on of WKPT-TV in 1969 and was constant until mid-February, 2002, when the second JSA was entered. Being a UHF station in a very mountainous market long dominated by two much older VHF stations, in almost thirty-three years Holston had never been able to become competitive in television news.[1] By mid-February, 2002, its news department, which had at one time employed some seventeen persons, was struggling to support a seven person staff, and Holston ceased producing its own news programs when the JSA with WJHL commenced. By

[1] Holston's news "firsts" during the third of a century it produced local TV news included WKPT-TV's being the first local station in the market to employ video tape in the field versus film, the first local station to provide news teaser "bumpers" leading into commercial breaks, and the first local station to present a daily 5:30 PM local newscast. Holston's WAPK-CA (then WAPK-LP) was the first and only TV station in the market to produce a 10 PM local newscast. (Tri-Cities, TN/VA, is in the Eastern time zone.)

comparison the two VHF licensees in the market, WCYB and WJHL, employ news staffs of thirty to forty persons.

6. Since mid-February, 2002, Holston has continued to produce its own local public affairs programming. (Holston's radio stations employ their own award-winning three-person news department, which is not affiliated in any way with the WJHL news department.) In order to keep local news flowing on Holston's television stations, since the beginning of the second JSA in mid-February, 2002, the WJHL news department has been supplying local news to Holston's TV stations, most of it on a live simulcast basis with WJHL.[2] Commercials within this news product on Holston's stations are sold separately by the separate sales staff WJHL employs to sell time on Holston's TV stations. The change has resulted in a seven hour per week increase in local news programming on Holston's TV stations. Importantly, should the relationship with WJHL end, Holston will most assuredly be unable to re-establish its own local news department given the ever-increasing fractionalization of the local television audience.

7. To understand the competitive situation for UHF stations in this mountainous market a look at the cumulative audience of the various stations and so-called basic cable networks in Tri-Cities, TN/VA, is instructive. To qualify in the "cume" a TV household in the sample must watch the channel at least one-quarter hour over a seven-day period. The following cumes for the Tri-City, TN/VA, market are from the May, 2004, Nielsen report:

[2] This news programming constitutes less than 15% of WKPT-TV's weekly broadcast time.

Local Stations	
WCYB channel 5 (NBC)	71.5%
WJHL channel 11 (CBS)	62.1%
WKPT channel 19 (ABC)	30.9%
WEMT channel 39 (Fox)	29.2%
"WB/4" (WB multicast on WCYB-DT)	15.1%
WAPK channel 36 (UPN)	11.0%
WLFG channel 68 (Religious)	5.3%
WSBN channel 47 (PBS)	4.0%
WMSY channel 52 (PBS)	< 1.0%

Selected "Basic Cable" Networks	
TBS	24.9%
Weather Channel	19.0%
Turner Network Television	19.0%
USA Network	18.8%
"FX"	18.7%
Hallmark	15.8%
Lifetime	15.7%
TV Land	15.2%
CNN	14.8%

There were 10 other "basic cable" networks with cumes between 11% and 15%.

8. One will note that leading cable networks widely exceed the five least-viewed local broadcast stations and that the top cable networks reach cume levels competitive with the local full power ABC and Fox affiliates. (Indeed, in some survey periods the top cable network has exceeded the local Fox affiliate in cumulative audience.) Additionally impacting this relatively small market in the heart of "Appalachia" is the small amount of overall television station revenue relative to its market ranking based on total households. The Television Bureau of Advertising (TVB) estimated 2003 total TV station revenues for Tri-Cities, TN/VA, and for the three markets above and below its market rank were:

Market	Household Ranking	2003 TV Station Revenues in $Millions
Chattanooga	86	33.3
South Bend	87	39.4
Cedar Rapids	88	33.5
TRI-CITIES, TN/VA	89	26.1
Burlington	90	35.3
Jackson (MS)	91	34.6
Colorado Springs	92	38.2

As evident from this data, the television station revenues for the Tri-Cities, TN/VA market are relatively lower than for similar- sized markets.

9. Financially the TV story in recent years has not been good for Holston. After suffering a net loss of over $300,000 from its TV operations in 1999, it had a successful financial picture during the initial JSA in 2000 and 2001, while its first JSA "partner" suffered substantial losses from the JSA. Since the second JSA commenced in early 2002 Holston's TV losses have been very substantial; however, through September, 2003, the bottom line - though still very negative - is some $200,000 improved over the first nine months of 2003. There is hope that in 2005 break-even will be reached for the first time since 1998.

10. Importantly, if one takes into consideration the JSA-related losses suffered by WCYB in 2000, 2001, and early 2002 and offsets them against the profits Holston derived from that first JSA and also takes into consideration Holston's TV losses in 1999, 2002, 2003, and the losses Holston anticipates from its TV operation in 2004, Holston's TV operation will end its sixth consecutive year "in the red."

Holston-Type JSA Should Not Be Attributable

11. While the facts set forth in the Background above may sound like the argument for a waiver of any new JSA attribution rule should the Commission proceed as it proposes to make

TV JSAs attributable (and no doubt these facts will re-appear within a waiver request should the Commission so proceed), Holston believes the Commission's proposal to make all television JSAs attributable is flawed since it is premised on the *Ackerly* case in which the station whose time was being sold by another station received a fixed fee regardless of the quality of its programming. Thus, the Ackerly stations had no incentive to provide a better product to the public. But, the Holston-type JSA is different and leaves programming decisions with the brokered station which has every incentive to offer programs that the public wants.

12. A JSA, at least one in which the station being "JSA-ed" covers the "JSA-ing" station's expenses associated with the JSA and additionally pays a fee to the "JSA-er" for providing the service, is more similar to the relationship between a national or regional sales representation firm and its client stations than it is to an LMA or ownership. There is no rule nor does the Commission apparently contemplate there being one, which would prohibit one "rep" firm from representing multiple radio or television stations in a given market nor does a firm's representing a station in the sale of advertising and getting paid for doing so give rise to its having an attributable interest in that station. Indeed it is not uncommon for the same rep firm or co-owned rep firms to represent multiple radio or TV stations in a given market.

13. As set forth in its Notice of Proposed Rulemaking (NPRM) the Commission's zeal in seeking to make television JSAs attributable is largely linked to programming. Programming in radio is far different from programming in television. In radio there are many musical "formats," which vary little from market to market in our homogenized society. Beyond paying music licensing fees to ASCAP, SESAC, and BMI, there is essentially no cost involved

in securing the "programming" for a music-based radio station. In radio the key is for a station to have its particular audience appeal - in some instances a small "niche" within the market. Since the play list for a given radio musical format varies little from market to market, stations don't have to pay large rights fees for the music they play or may carry a music-based satellite network essentially 100% of the time, and stations can be easily and inexpensively automated, in a radio operation the sales department could easily essentially control the station. Thus, it would appear that the Commission's ruling with regard to the ownership attribution of radio JSAs is plausible.

14. In television, on the other hand, as noted above, programming is an entirely different animal. Stations "battle it out" to secure the best syndicated product. Stations represented nationally, regionally, and yes locally by sales teams, which are employed by the same firm, vie for the same top syndicated product, because a given station's sales team can only produce sales results commensurate with the ratings produced by the station's programming. The licensee programming the station - at least in a pay as you go JSA - must program the station well, or positive sales results will not follow, and thus in such a JSA the level of revenue necessary for the station to prosper will not accrue to the licensee.

15. Holston heartily agrees with the following statement in paragraph 13 of the NPRM "… a JSA providing a licensee with a fixed monthly fee, regardless of the advertising sales or audience share of the TV station, transfers all market risk from the licensee to the broker." That is one kind of arrangement, which is labeled a JSA. However, as detailed herein, that is not the kind of JSA into which Holston and Media General Broadcast Group have entered. Through economies of scale a JSA of the kind in place in Tri-Cities, TN/VA, provides to a

struggling station the ability to purchase needed sales, traffic and marketing services for less expense than would be required for the licensee to provide the services internally. For example, in 1999, the last year in which Holston provided TV sales, traffic, and promotion, internally, it expended thirty-seven cents on those departments for every net sales dollar produced. In the year 2003 with these three departments "out-sourced" to Media General, only thirty-one cents were spent on these functions per dollar of advertising revenue produced.

16. The JSA is also positive for the "JSA-ing" party. For example, Media General's WJHL, as with virtually all network affiliates, is losing revenue it has enjoyed for decades as CBS cuts compensation to its affiliates. The JSA with Holston's television division provides a means of replacing a portion that revenue through the commission Holston pays WJHL over and above covering WJHL's JSA-related expenses. Additionally, some of the economies of scale realized by Holston should also accrue to WJHL.

Conclusion

17. For the reasons set forth herein Holston believes that the Commission should not declare all television JSAs as attributable under its multiple ownership rules. Instead the Commission should define what types of television JSAs are indeed attributable and what types of JSA's are not. Those that are not should include JSAs in which the station "JSA-ed" covers the JSA-related expenses of the party providing the purchased services and additionally pays the "JSA-ing" station a commission or profit for its efforts.

18. Alternatively, JSAs could be examined on a case-by-case basis; however, the Commission should take note of the fact that as cable and satellite become more and more dominant and assuming the Commission chooses to cling to its current view that cross-

ownership or pure LMAs among the so-called "top 4" stations in small markets are forbidden, increasingly weaker stations will turn to JSAs as a last resort before "throwing in the towel" on their TV operations. But, if all JSAs are deemed to be attributable without a reasoned analysis of what is really involved, this option will also be foreclosed.

19. Finally, Holston uses the term "so-called" in describing the top 4. Typically the top 4 stations in a market have audience levels, which are at least somewhat comparable. As shown above, it isn't that way everywhere and certainly not in Tri-Cities, TN/VA, where the cumulative audience of even the number two ranked station is greater than the combined cumulative audience of the number three and number four ranked stations and where the number one ranked station's cumulative audience is nearly a fifth greater than the combined "cume" of the number three and number four ranked stations.

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20. Should the Commission make what Holston believes would be the dire mistake of making all JSAs across the board attributable, Holston shall promptly seek a waiver from the Commission to allow continuation of its current JSA with Media General's WJHL for the reasons set forth herein.

Respectfully submitted,

HOLSTON VALLEY
BROADCASTING CORPORATION

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October 27, 2004

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